UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MDG INTERNATIONAL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:07-cv-1096-SEB-TAB
	)	
AUSTRALIAN GOLD, INC.,	)	
	)	
Defendant	)	
	)	

DEFENDANT'S ANSWER AND COUNTERCLAIM TO PLAINTIFF'S COMPLAINT

Defendant Australian Gold, Inc. ("Australian Gold"), for its Answer to Plaintiff MDG International, Inc.'s ("MDG") Complaint, states as follows:

I. PARTIES, VENUE, AND JURISDICTION

1. Australian Gold admits the allegations in paragraph 1 of Plaintiff's Complaint.

2. Australian Gold admits the allegations in paragraph 2 of Plaintiff's Complaint

3. Australian Gold admits the allegations in paragraph 3 of Plaintiff's Complaint

4. Australian Gold admits the allegations in paragraph 4 of Plaintiff's Complaint.

II. FACTUAL ALLEGATIONS

5. Australian Gold incorporates its responses to the allegations contained in paragraphs 1 through 4 of the Plaintiff's Complaint as its response to paragraph 5 of Plaintiff's Complaint.

6. Australian Gold admits the allegations in paragraph 6 of Plaintiff's Complaint.

7. Australian Gold admits that MDG and ETS, Inc. ("ETS") entered into a Distributorship Agreement dated May 27, 1994, but denies the remaining allegations in paragraph 7 of Plaintiff's Complaint.

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8. Australian Gold admits the allegations in paragraph 8 of Plaintiff's Complaint.

9. For its response to paragraph 9 of Plaintiff's Complaint, Australian Gold states that the Agreement speaks for itself and denies any remaining allegations in paragraph 9 of Plaintiff's Complaint.

10. Australian Gold admits the allegations in paragraph 10 of Plaintiff's Complaint.

11. Australian Gold denies the allegations in paragraph 11 of Plaintiff's Complaint.

12. For its response to paragraph 12 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 12 of Plaintiff's Complaint.

13. Australian Gold admits the allegations in paragraph 13 of Plaintiff's Complaint.

14. For its response to paragraph 14 of Plaintiff's Complaint, Australian Gold states that the Agreement speaks for itself and denies any remaining allegations in paragraph 14 of Plaintiff's Complaint.

15. Australian Gold admits that it has sold Australian Gold products to Starboard Cruise Services, but denies the remaining allegations in paragraph 15 of Plaintiff's Complaint.

16. Australian Gold admits that it has sold Australian Gold products to Walgreens in the United States and that Walgreens has stocked some Australian Gold products in Puerto Rico, but denies the remaining allegations in paragraph 16 of Plaintiff's Complaint.

17. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of Plaintiff's Complaint.

18. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of Plaintiff's Complaint.

19. Australian Gold is without sufficient knowledge or information to form a belief as to the

truth of the allegations in paragraph 19 of Plaintiff's Complaint.

20. For its response to paragraph 20 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 20 of Plaintiff's Complaint.

21. For its response to paragraph 21 of Plaintiff's Complaint, Australian Gold states that the referenced exhibits speak for themselves and denies any remaining allegations in paragraph 21 of Plaintiff's Complaint.

22. For its response to paragraph 22 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 22 of Plaintiff's Complaint.

23. Australian Gold denies the allegations in paragraph 23 of Plaintiff's Complaint.

24. Australian Gold admits the allegations in paragraph 24 of Plaintiff's Complaint.

25. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 25 of Plaintiff's Complaint.

26. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26 of Plaintiff's Complaint.

27. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 27 of Plaintiff's Complaint.

28. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 28 of Plaintiff's Complaint.

29. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 29 of Plaintiff's Complaint.

30. Australian Gold denies the allegations in paragraph 30 of Plaintiff's Complaint.

31. Australian Gold admits that it requested that the products allegedly removed from the Brazilian market be returned to Australian Gold in the United States, but denies the remaining allegations in paragraph 31 of Plaintiff's Complaint.

32. Australian Gold denies the allegations in paragraph 32 of Plaintiff's Complaint.

33. Australian Gold denies the allegations in paragraph 33 of Plaintiff's Complaint.

34. Australian Gold denies the allegations in paragraph 34 of Plaintiff's Complaint.

35. Australian Gold denies the allegations in paragraph 35 of Plaintiff's Complaint.

36. Australian Gold denies the allegations in paragraph 36 of Plaintiff's Complaint.

37. For its response to paragraph 37 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 37 of Plaintiff's Complaint.

38. For its response to paragraph 38 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 38 of Plaintiff's Complaint.

39. Australian Gold admits the allegations in paragraph 39 of Plaintiff's Complaint.

40. Australian Gold admits that MDG participated in rebate programs and reached certain rebate levels, but is without sufficient knowledge or information to form a belief as to the truth of any remaining allegations in paragraph 40 of Plaintiff's Complaint.

41. For its response to paragraph 41 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 41 of Plaintiff's Complaint.

42. Australian Gold admits that invoices were issued with 90-day payment terms and that certain invoices that were issued with incorrect payment terms were corrected to show

90-day payment terms, and denies any remaining allegations in paragraph 42 of Plaintiff's Complaint.

43. Australian Gold denies the allegations in paragraph 43 of Plaintiff's Complaint.

44. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 44 of Plaintiff's Complaint.

45. Australian Gold denies the allegations in paragraph 45 of Plaintiff's Complaint.

46. Australian Gold admits that it sent a new price list to Plaintiff on or about November 30, 2006, but denies the remaining allegations in paragraph 46 of Plaintiff's Complaint.

47. Australian Gold denies the allegations in paragraph 47 of Plaintiff's Complaint.

48. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 48 of Plaintiff's Complaint.

49. For its response to paragraph 49 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself, denies the Plaintiff's characterization of the exhibit as "presenting sudden and radical changes to the Agreement," and denies any remaining allegations in paragraph 49 of Plaintiff's Complaint.

50. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 50 of Plaintiff's Complaint.

51. For its response to paragraph 51 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 51 of Plaintiff's Complaint.

52. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 52 of Plaintiff's Complaint.

53. Australian Gold admits the allegations in paragraph 53 of Plaintiff's Complaint.

54. Australian Gold denies the Plaintiff's characterization that it "imposed" changes, but admits the remaining allegations in paragraph 54 of Plaintiff's Complaint.

55. Australian Gold denies the allegations in paragraph 55 of Plaintiff's Complaint.

56. For its response to paragraph 56 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 56 of Plaintiff's Complaint.

57. Australian Gold denies the allegations in paragraph 57 of Plaintiff's Complaint.

58. Australian Gold denies the allegations in paragraph 58 of Plaintiff's Complaint.

59. Australian Gold denies the allegations in paragraph 59 of Plaintiff's Complaint.

60. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 60 of Plaintiff's Complaint.

61. Australian Gold denies the allegations in paragraph 61 of Plaintiff's Complaint.

62. For its response to paragraph 62 of Plaintiff's Complaint, Australian Gold states that the referenced exhibit speaks for itself and denies any remaining allegations in paragraph 62 of Plaintiff's Complaint.

63. Australian Gold denies the allegations in paragraph 63 of Plaintiff's Complaint.

64. Australian Gold denies the allegations in paragraph 64 of Plaintiff's Complaint.

65. Australian Gold admits that some products, including those created exclusively for certain markets not applicable to Plaintiff's territories, have not been offered to Plaintiff in 2007, but denies any remaining allegations in paragraph 65 of Plaintiff's Complaint.

66. Australian Gold denies the allegations in paragraph 66 of Plaintiff's Complaint.

67. Australian Gold denies the allegations in paragraph 67 of Plaintiff's Complaint.

68. For its response to paragraph 68 of Plaintiff's Complaint, Australian Gold states that the

referenced exhibit speaks for itself and denies any remaining allegations in paragraph 68 of Plaintiff's Complaint.

69. Australian Gold admits the allegations in paragraph 69 of Plaintiff's Complaint.

70. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 70 of Plaintiff's Complaint.

71. Australian Gold denies the allegations in paragraph 71 of Plaintiff's Complaint.

72. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 72 of Plaintiff's Complaint.

73. Australian Gold admits the allegations in paragraph 73 of Plaintiff's Complaint.

74. Australian Gold denies the allegations in paragraph 74 of Plaintiff's Complaint.

75. Australian Gold admits the allegations in paragraph 75 of Plaintiff's Complaint.

76. Australian Gold admits that it has produced a 4.22 ounce bottle for sale by MDG, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 76 of Plaintiff's Complaint.

77. Australian Gold admits the allegations in paragraph 77 of Plaintiff's Complaint.

78. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 78 of Plaintiff's Complaint.

79. Australian Gold admits the allegations in paragraph 79 of Plaintiff's Complaint.

80. Australian Gold admits that Plaintiff has ordered products which it knew were not in Australian Gold's inventory, but denies that production of the 4.22 oz. bottle has ceased and denies the remaining allegations in paragraph 80 of Plaintiff's Complaint.

81. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 81 of Plaintiff's Complaint.

82. Australian Gold denies the allegations in paragraph 82 of Plaintiff's Complaint related to a "contradictory symbol" and is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 82 of Plaintiff's Complaint.

83. Australian Gold is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 83 of Plaintiff's Complaint.

84. Australian Gold denies the allegations in paragraph 84 of Plaintiff's Complaint.

III. LEGAL ALLEGATIONS

COUNT I: BREACH OF CONTRACT

85. Australian Gold incorporates its responses to the allegations contained in paragraphs 1 through 84 of the Plaintiff's Complaint as its response to paragraph 85 of Plaintiff's Complaint.

86. Australian Gold denies the allegations in paragraph 86 of Plaintiff's Complaint.

87. Australian Gold denies the allegations in paragraph 87 of Plaintiff's Complaint.

88. Australian Gold admits that some products, including those created exclusively for certain markets not applicable to Plaintiff's territory, have not been offered to MDG, but denies any remaining allegations in paragraph 88 of Plaintiff's Complaint.

89. Australian Gold denies the allegations in paragraph 89 of Plaintiff's Complaint.

90. Australian Gold denies the allegations in paragraph 90 of Plaintiff's Complaint.

91. Australian Gold denies the allegations in paragraph 91 of Plaintiff's Complaint.

92. Australian Gold denies the allegations in paragraph 92 of Plaintiff's Complaint.

93. Australian Gold denies the allegations in paragraph 93 of Plaintiff's Complaint.

94. Australian Gold denies the allegations in paragraph 94 of Plaintiff's Complaint.

95. Australian Gold denies the allegations in paragraph 95 of Plaintiff's Complaint.

COUNT II: CONSTRUCTIVE FRAUD

96. Australian Gold incorporates its responses to the allegations contained in paragraphs 1 through 95 of the Plaintiff's Complaint as its response to paragraph 96 of Plaintiff's Complaint.

97. Australian Gold denies the allegations in paragraph 97 of Plaintiff's Complaint.

98. Australian Gold denies the allegations in paragraph 98 of Plaintiff's Complaint.

99. Australian Gold denies the allegations in paragraph 99 of Plaintiff's Complaint.

100. Australian Gold denies the allegations in paragraph 100 of Plaintiff's Complaint.

101. Australian Gold denies the allegations in paragraph 101 of Plaintiff's Complaint.

102. Australian Gold denies the allegations in paragraph 102 of Plaintiff's Complaint.

COUNT III: ACTUAL FRAUD

103. Australian Gold incorporates its responses to the allegations contained in paragraphs 1 through 102 of the Plaintiff's Complaint as its response to paragraph 103 of Plaintiff's Complaint.

104. Australian Gold denies the allegations in paragraph 104 of Plaintiff's Complaint.

105. Australian Gold denies the allegations in paragraph 105 of Plaintiff's Complaint.

106. Australian Gold denies the allegations in paragraph 106 of Plaintiff's Complaint.

107. Australian Gold denies the allegations in paragraph 107 of Plaintiff's Complaint.

108. Australian Gold denies the allegations in paragraph 108 of Plaintiff's Complaint.

ADDITIONAL DEFENSES

1. Various causes of action in Plaintiff's Complaint fail to state claims upon which relief may be granted.

2. Plaintiff's claims are barred in whole or in part by the doctrine of laches.

3. Plaintiff's claims are barred in whole or in part by the applicable statutes of limitations.

4. Plaintiff's claims are barred or diminished in whole or in part by the doctrine of unclean hands.

5. Plaintiff's claims are barred or diminished in whole or in part by the doctrine of waiver.

6. Plaintiff's claims are barred in whole or in part because Plaintiff's fault is greater than the fault of all whose fault contributed.

7. Plaintiff's claims are barred in whole or in part by its failure to mitigate its damages.

8. Plaintiff's claims are barred in whole or in part by accord and satisfaction.

9. Plaintiff's claims are barred in whole or in part subject to the provisions of the Comparative Fault Act.

10. Plaintiff's claims are barred in whole or in part and/or diminished by the principles of setoff.

11. Australian Gold reserves the right to amend and otherwise add to these defenses as other defenses become known through discovery or otherwise.

WHEREFORE, Australian Gold requests that the Court enter judgment against Plaintiff and in favor of Australian Gold, award Australian Gold its costs incurred in defending this lawsuit, and grant Australian Gold all appropriate other relief.

COUNTERCLAIM AND DEMAND FOR JURY TRIAL

I. PARTIES, VENUE AND JURISDICTION

1. MDG is a Florida corporation with its principal place of business in North Miami Beach,

Florida.

2. Australian Gold is an Indiana corporation with its principal place of business in Indianapolis, Indiana.

3. This Court has subject matter jurisdiction over this counterclaim pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds the sum or value of $75,000 and the parties are citizens of different states.

4. Venue is appropriate pursuant to 28 U.S.C. § 1391 in that a substantial part of the events or omissions giving rise to the claim occurred in the Southern District of Indiana and in that the parties have contractually consented to jurisdiction within this District. (Distributorship Agreement ("Agreement") at ¶ 7.4, attached as Exhibit 1 to Plaintiff's Complaint)

II. FACTUAL ALLEGATIONS

5. On May 27, 1994, MDG and ETS, Inc. ("ETS") executed a Distributorship Agreement ("Agreement"), which was attached as Exhibit 1 to Plaintiff's Complaint, for the distribution of Australian Gold products.

6. On November 1, 1997, ETS assigned its rights under the Agreement to Australian Gold. (*See* Exhibit 2 of Plaintiff's Complaint.)

7. The Agreement authorizes MDG to market, distribute and sell Australian Gold products in certain specified territories. (Agreement at ¶ 2.1)

8. The Agreement provided for an initial term from September 23, 1993 through December 31, 1994. Thereafter, the Agreement renews on a year to year basis, subject to the meeting of minimum purchase requirements as to each of MDG's territories. (Agreement at ¶ 2.2)

Minimum Purchase Requirements

9. During the Agreement's initial term, MDG was responsible for sales in four territories: (1) South America; (2) Mexico; (3) Central America, including Puerto Rico and the Caribbean; and (4) Israel. (Agreement at ¶ 2.3)

10. During the Agreement's initial term the minimum purchase requirements for the territories were as follows: (1) South America - 79,500 units; (2) Mexico - 106,000 units; (3) Central America - 79,500 units; and (4) Israel - 10,000 units. (*Id.*)

11. The Agreement provides that the minimum purchase requirement for each territory in each subsequent year shall be 110% of the minimum purchase requirement for the previous year, with the exception that the South America minimum purchase requirement would be 70,000 units in 1995. (*Id.*)

12. The Agreement provides that in the event that MDG does not meet the minimum purchase requirement for a particular territory, then MDG's right to market, distribute and sell Australian Gold products in that territory shall be automatically terminated unless Australian Gold and MDG expressly agree in writing that the Agreement should be renewed as to the territory in which the minimum purchase requirement was not met. (Agreement at ¶ 2.2)

13. MDG has never sold any Australian Gold products in Israel.

14. Upon information and belief, in 2004, MDG did not meet the minimum purchase requirement for at least one of its remaining territories - South America, Mexico and/or Central America.

MDG's Improper Labeling of Australian Gold Products

15. The Agreement provides that MDG shall not amend, alter, or replace any product labels,

and shall not provide a translation of statements made on product labels without the prior written consent of Australian Gold. (Agreement at ¶ 3.4)

16. Over the course of the Agreement, MDG purchased Australian Gold products, including certain discontinued products from time to time.

17. As a distributor, MDG is responsible for knowing and adhering to the laws and regulations of each country within its territories.

18. As a distributor, MDG is expected to know whether and where it can sell certain Australian Gold products.

19. When Australian Gold fills an order it generally does not know where or how MDG intends to sell the product.

20. Upon information and belief, in 2005 and/or 2006, MDG attempted to sell Australian Gold products in Brazil, including certain discontinued products.

21. Prior to sending these products to Brazil, MDG did not complain to Australian Gold that the products were unsuitable for sale.

22. However, prior to placing the products in the Brazilian market, MDG affixed labels to the products without Australian Gold's authorization.

23. These unauthorized labels incorrectly indicated that the particular product expired two years after the product was delivered to Brazil, instead of two years after the product was manufactured.

24. These unauthorized and incorrect labels actually contradicted markings already on the products when originally shipped by Australian Gold.

25. Upon information and belief, because MDG affixed these unauthorized and contradictory labels to Australian Gold's products, a Brazilian health agency refused to allow certain of

these products to be sold in the Brazilian market.

26. Unaware of MDG's unauthorized actions, Australian Gold agreed to have certain Australian Gold products returned to Australian Gold in the United States at Australian Gold's expense.

27. Unaware of MDG's unauthorized actions, Australian Gold agreed to credit MDG's account for the full purchase price of the returned products in an effort to maintain goodwill with MDG.

Unauthorized Assignment of Agreement by MDG

28. The Agreement provides that it may not be assigned by MDG. (Agreement at ¶ 7.9)

29. The Agreement further provides that MDG's use of sub-distributors constitutes an improper assignment of the Agreement unless Australian Gold first consents to the particular sub-distributor agreement. (*Id.*)

30. Upon information and belief, MDG has engaged sub-distributors of Australian Gold products in its territories, including South America and Mexico, without Australian Gold's authorization.

Forecast of Product Requirements by MDG

31. Over the course of the Agreement, MDG periodically provided Australian Gold with forecasts, in which MDG represented to Australian Gold that it would purchase a certain amount of Australian Gold products in 4.22 ounce bottles ("the MDG Forecasts").

32. Australian Gold products in the 4.22 ounce bottle size are made specifically for MDG to sell in its territories.

33. Relying on the MDG Forecasts, Australian Gold produced a substantial number of products in the 4.22 ounce bottle size.

34. The production, stocking, and storage of Australian Gold products in the 4.22 ounce bottle size, as identified in the MDG Forecasts, caused Australian Gold to incur substantial costs.

35. MDG has not purchased the Australian Gold products in the 4.22 ounce bottle size in a manner consistent with its representations in the MDG Forecasts.

III. LEGAL ALLEGATIONS

COUNT I: BREACH OF CONTRACT

36. Australian Gold incorporates by reference each allegation set forth in paragraphs 1 - 35 as if fully set forth herein.

37. MDG has breached the Agreement by:

   a. Affixing unauthorized and improper labels to Australian Gold products for sale in Brazil;

   b. Affixing unauthorized labels to Australian Gold products for sale in other countries;

   c. Failing to meet the minimum purchase requirement for Israel;

   d. Failing to meet the minimum purchase requirement for at least one of its remaining territories (South America, Mexico, and/or Central America) in 2004; and

   e. Engaging sub-distributors for the sale of Australian Gold products without Australian Gold's prior authorization.

38. MDG's actions in this respect caused a material breach of the Agreement.

39. As a result of MDG's unauthorized and improper actions, Australian Gold suffered economic losses and damages, and MDG is liable to Australian Gold for these damages.

COUNT II: ACTION FOR DECLARATORY JUDGMENT

40. Australian Gold incorporates by reference each allegation set forth in paragraphs 1 - 39 as if fully set forth herein.

41. The Agreement provides that Australian Gold may terminate the Agreement after ten days notice for MDG's breach of or failure to comply with any term or provision of the Agreement. (Agreement at ¶ 5.1(b)(A)(i))

42. MDG has never sold any Australian Gold products in Israel.

43. Consequently, MDG has failed to meet the minimum purchase requirements for Israel.

44. Australian Gold seeks a declaration that, pursuant to the Agreement, MDG's right to market, distribute and sell Australian Gold products in Israel has been terminated.

45. Upon information and belief, MDG failed to meet the minimum purchase requirements for at least one of its remaining territories (South America, Mexico, and/or Central America) in 2004.

46. Australian Gold seeks a declaration that, pursuant to the Agreement, MDG's right to market, distribute and sell Australian Gold products in South America, Mexico, and/or Central America has been terminated.

47. On one or more occasions, MDG affixed unauthorized labels to Australian Gold products, in violation of ¶ 3.4 of the Agreement.

48. This breach resulted in damages to Australian Gold that cannot be cured by MDG.

49. Australian Gold seeks a declaration that, pursuant to the Agreement, Australian Gold may terminate the Agreement after ten days notice for MDG's failure to obtain prior authorization from Australian Gold before amending, altering or replacing the labels on Australian Gold's products, as required by ¶ 3.4 of the Agreement.

50. Upon information and belief, MDG has engaged sub-distributors for the sale of Australian Gold products in some of MDG's territories, without Australian Gold's authorization, in violation of ¶ 7.9 of the Agreement.

51. Australian Gold seeks a declaration that, pursuant to the Agreement, Australian Gold may terminate the Agreement after ten days notice for MDG's unauthorized engagement of sub-distributors in violation of ¶ 7.9 of the Agreement.

COUNT III: EQUITABLE ESTOPPEL

52. Australian Gold incorporates by reference each allegation set forth in paragraphs 1 - 51 as if fully set forth herein.

53. Over the course of the Agreement, MDG periodically provided Australian Gold with forecasts, in which MDG represented to Australian Gold that it would purchase a certain amount of Australian Gold products in 4.22 ounce bottles ("the MDG Forecasts").

54. MDG knows that Australian Gold relied on the MDG Forecasts in preparing its production schedule.

55. Australian Gold incurred costs in the production, stocking, and storage of Australian Gold products in the 4.22 ounce bottle size, in reliance on the MDG Forecasts.

56. MDG has not purchased the Australian Gold products in the 4.22 ounce bottle size in a manner consistent with its representations in the MDG Forecasts.

57. Australian Gold reasonably relied on MDG's representations in the MDG Forecasts to its detriment, and Australian Gold has suffered damages as a result of that detrimental reliance,

58. MDG is equitably estopped from denying its representations to Australian Gold in the MDG Forecasts, and is liable to Australian Gold for all damages Australian Gold has

suffered as a result of its detrimental reliance.

WHEREFORE, Australian Gold asks the Court to:

1. Enter judgment in favor of Australian Gold and against MDG, ordering it to pay Australian Gold an amount that will fully compensate Australian Gold for its damages;

2. Issue a declaration that:

    a. MDG's right to market, distribute and sell Australian Gold products in Israel has been terminated for failure to meet the Agreement's minimum purchase requirements;

    b. MDG's right to market, distribute and sell Australian Gold products in South America, Mexico and/or Central America has been terminated for failure to meet the Agreement's minimum purchase requirements;

    c. Australian Gold may terminate the Agreement after ten days notice for MDG's failure to obtain prior authorization from Australian Gold before amending, altering or replacing the labels on Australian Gold's products, as required by ¶ 3.4 of the Agreement; and

    d. Australian Gold may terminate the Agreement after ten days notice for MDG's unauthorized engagement of sub-distributors in violation of ¶ 7.9 of the Agreement.

3. Award Australian Gold the costs of this action and all further appropriate relief.

Respectfully submitted,

/s/ Thomas F. O'Gara
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 17, 2007, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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